IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2007

CORAM
THE HON'BLE MR. JUSTICE S.J. MUKHOPADHAYA
&
THE HON'BLE MR. JUSTICE V. DHANAPALAN

W.A. No.1334 of 1998

1 C.N. Krishnan (deceased)
2 K. Indrani
3 K. Selvam
4 Ellammal
5 K. Kannan
6 K. Muthiah
7 S. Valarmathi
8 Pushpa @ Malarvizhi
9 Poongothai @ Poongodi Appellants

(RR 2 to 9 who are wife, sons and daughters of the deceased sole appellant are impleaded as his legal heirs vide order of this Court dated 14.02.2005 made in W.A.M.P. No.886 of 2005)

vs.

1 The Management of Indra Cotton Mills (P) Limited
Chromepet
Chennai - 600 044

2 The Presiding Officer
II Additional Labour Court
Madras Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 11.09.1998 passed by a learned Single Judge of this Court in W.P. No.13639 of 1989 confirming the order dated 19.11.1986 Writ petition under Article 226 of the constitution of India, the issuance a writ certiorari calling for the records connected with the orders of the II Additional Labour Court, madras in CP.No.628/1987 dated 4.5.1989 and to quash the said order in so far as it has disallowed the claim of the petitioner towards backwages to an extent of Rs.20,185/- and it has allowed the counter claim of the first respondent for payment of Rs.9884/- as compensation to the petitioner in lieu of reinstatement and for gratuity of Rs.10,390/- and to pass such further orders passed by the second respondent in C.P. No.628 of 1987.

For appellant Mr.V.Gangatharan for Mr.R.Ganesan
For 1st respondent Mr. D. Meenakshisundaram

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JUDGMENT

(Judgment of the court was delivered by V. DHANAPALAN, J.)

Challenge to this writ appeal is the order dated 11.09.1998 passed by a learned Single Judge of this Court in and by which the order dated 19.11.1986 of the second respondent Labour Court in C.P. No.628 of 1987 is confirmed.

2. Subsequent to filing of this writ appeal, the appellant has died and his legal heirs, viz., wife, sons and daughters have been impleaded in this writ appeal as appellants 2 to 9.

3. The facts giving rise to this writ appeal, are, as follows:

- The first appellant who was employed under the first respondent for 25 years, was issued a Charge Memo 17.04.1982, on two grounds, viz., for being negligent in work and for speaking in an indifferent manner to his supervisor. He was placed under suspension on 15.04.1982 and was subsequently terminated from service on 04.10.1982. Aggrieved by his termination, the first appellant raised an Industrial Dispute and the second respondent Labour Court passed an award on 19.11.1986, quashing the order of dismissal passed by the first respondent and further directed reinstatement of the first appellant with back-wages and other attendant benefits.

- Since the first appellant did not comply with the award of the second respondent Labour Court by reinstating the first appellant in spite of his sending two letters expressing his willingness to join duty, the first appellant filed a Claim Petition in C.P. No.628 of 1987 seeking back-wages, leave wages, arrears of wages and bonus, altogether amounting to Rs.81,757/- without prejudice to his right to reinstatement. In the counter filed by the first respondent, it was contended that it had lost its confidence in the first appellant and as such, the first appellant could not be reinstated into service. Instead, the first respondent offered to pay damages to the first appellant in lieu of reinstatement along with gratuity. The second respondent Labour Court accepted the plea of first respondent to pay damages in lieu of reinstatement and computed the total money value as follows:

S.No	Particulars	Amount (Rs.)
1	Back-wages from April 82 to June 87	48,912
2	Leave Salary	3,660
3	Bonus for the years 82-83, 83-84 & 84-85	6,600
4	Bonus advance for 1985-86	1,000
5	Damages in lieu of reinstatement	9,984
6	Gratuity for 25 years of service	10,390
	Total	80,546

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- Challenging the above order of the second respondent Labour Court insofar as disallowance of his claim for backwages and also with regard to allowing the counter claim of the first respondent, the first appellant filed a writ petition in W.P. No.13639 of 1989. A learned Single Judge of this Court, in the impugned order dated 11.09.1998, as far as the claim of the first appellant with regard to payment of back-wages and other benefits is concerned, by referring to paragraph 11 of the affidavit accompanying the writ petition, held that the first appellant is satisfied with the same. The learned Single Judge further concurring with the finding of the second respondent Labour Court that the first appellant and first respondent are at loggerheads and as such, it may not be possible for them to maintain coordination, endorsed the findings of the second respondent Labour Court in accepting the counter claim made by the first respondent.

- Questioning the findings of the learned Single Judge on the above two points, viz., non-interference in the money value computed by the second respondent Labour Court with regard to back-wages and other benefits and endorsement of the acceptance of the counter-claim of the first respondent by the second respondent Labour Court, the first appellant has filed the present writ appeal.

4. Mr. V. Gangatharan, learned counsel for the appellant, by drawing our attention to Section 33(C) 2 of the Industrial Disputes Act, 1947, has contended that the learned Single Judge ought to have quashed the order of the second respondent Labour Court on the ground that it has no jurisdiction to accept the counter-claim made by the first respondent. His further contention is that the learned Single Judge should have held that the second respondent Labour Court has no jurisdiction to determine Gratuity amount under the Payment of Gratuity Act.

5. Per contra, Mr. D. Meenakshisundaram, learned counsel for the first respondent has contended that the first appellant is not in the good books of the Management of the first respondent in view of his past ill record and also his initiation of legal proceedings against the first respondent and as such, the order of the learned Single Judge in confirming the order of the second respondent Labour Court in accepting the counter claim of the first respondent, is perfectly in order and hence, need not be interfered with.

6. We have given our careful thought to the submissions made by the learned counsel on either side and have perused the order of the learned Single Judge which is impugned in this writ appeal.

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7. The points which demand consideration in this appeal are as follows:

a. whether the learned Single Judge is correct in not interfering with the award of the second respondent Labour Court when the latter has accepted the counter-claim of the first respondent , i.e. payment of damages in lieu of reinstatement?

b. Whether the learned Single Judge has erred in not holding that the second respondent Labour Court is not the proper authority to compute the Gratuity amount payable to the first appellant?

8. While answering the first point, some useful reference could be made to Section 33(C)(2) of the Industrial Disputes Act, 1947, which reads as follows:

> "Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months."

9. From a plain reading of the above provision, it is clear that it is nowhere mentioned that the Labour Court should not accept counter claim by the respondent. That being the case, the contention of the counsel for the appellant that the second respondent Labour Court has no jurisdiction to accept the counter-claim as per Section 33(C)(2), does not deserve consideration and as such, the same is brushed aside. That apart, it is to be noted that the first appellant had filed the writ petition when he was left with only eight years of service and at the time of final hearing of the writ petition, he had attained the age of superannuation. Therefore, the learned Single Judge, while considering the question of jurisdiction of the Labour Court in entertaining the counter-claim of the first respondent, has opined that if it is held that there is no jurisdiction for the second respondent Labour Court to consider the counter-claim, then, the matter has to be remitted to decide whether the first appellant was entitled to back-wages till the date of super-annuation. In this context, it may be stated that in order to render substantial justice, the High Court is not powerless to pass any order in consonance with the principles of justice, equity and good conscience. In that view of the matter, we find no reason to interfere with the finding of the learned Single Judge in confirming the order of the second respondent Labour Court with regard to its jurisdiction in entertaining the counter-claim of the first respondent.

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10. Coming to the second point for determination as to whether the second respondent Labour Court can determine the amount of Gratuity payable, it is not at all in dispute that the first appellant was employed under the first respondent for a period 25 years. Yet another aspect to be noted is that the first appellant was not employed elsewhere subsequent to his termination by the first respondent. Though the first respondent has contended that the first appellant was in employment elsewhere, there was no evidence let in on its side to prove its claim. Further, it is seen that the second respondent Labour Court, while arriving at the Gratuity payable, has taken into consideration, 25 years of service put in by the first appellant and his 15 days salary per year of service which is nothing but the usual method of calculating Gratuity payable. Thus, it is seen that no injustice is caused to the first appellant by the action of the second respondent Labour Court while calculating the Gratuity amount payable and hence, the learned Single Judge has categorically held that in the interest of justice, the award of the second respondent Labour Court need not be interfered with.

11. Furthermore, it appears that the first respondent Management and the first appellant were not having a cordial relationship, as found by the Labour Court which has observed that a congenial atmosphere would not prevail if the first appellant was reinstated. Taking this aspect into consideration, the learned Single Judge has held that the Labour Court, in the interest of justice and to bring about peaceful settlement between the first appellant and the first respondent, has accepted the counter-claim of the first respondent to pay damages in lieu of compensation and this finding of the learned Single Judge is quite justifiable as the High Court can exercise not only constitutional jurisdiction but also equitable jurisdiction.

Thus, having regard to the facts and circumstances of the case and the discussion made above, we are of the considered view that the order of the learned Single Judge which is impugned in this writ appeal, is perfectly in order and as such, does not warrant any sort of interference by us. Accordingly, the writ appeal which is devoid of any merit, stands dismissed, with no order as to costs.

cad

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Presiding Officer
II Additional Labour Court
Madras

+1 cc to R.Ganesan, Advocate Sr.No.23071.

VRK(CO)

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